

ORDER OF THE DEPARTMENT OF COMMERCE

CREATING RULES

The Wisconsin Department of Commerce proposes an order to repeal Comm 48.300 (1) (c);

to renumber Comm 48.01 to 48.03; 48.300 (1) (d) and (e), and (3) to (7); 48.04; 48.500 (1) (d) and (e); 48.05 to 48.07; 48.09; 48.600 (1) (intro.) and (a); 48.10; and 48.11;

to amend Comm 48.100 (title), (4), (5), and (7) (intro) and (c) (intro.) and 5.; 48.200 (5) Note (2); 48.300 (1) (a) and (c) and (7); 48.500 (1) (title) and (a), Table 48.500 footnote a, and (2); 48.580 (1) (b) 9., (2), and (3) (a); 48.600 (2) (c) and (d), and (3) (intro.), (a) (intro.) and 1., and (b);

to repeal and recreate Comm 48.035;

and to create Comm 48.100 (7) (c); 48.300 (3), (5), (7), and (10); 48.500 (1) (d); 48.590; 48.600 (1) (b) 3.; and Comm 48.650, relating to petroleum products.

Analysis of proposed rules

1. Statutes interpreted.

Sections 101.02 (1), 168.04 (1) and (3), 168.05, 168.07, 168.10, 168.11 (1), 168.13, 168.14 (2), and 168.16 (4) of the Statutes.

2. Statutory authority.

Sections 101.02 (1), 168.04 (1) and (3), 168.07 (2), 168.16 (4), and 227.11 (2) (a) of the Statutes.

3. Explanation of agency authority.

Under section 101.02 (1) of the Statutes, the Department is required to adopt reasonable rules relative to the exercise of the Department's powers and authorities, and to the mode and manner of its inspections. Under chapter 168 of the Statutes, the Department is responsible for inspection of petroleum products that come into Wisconsin. Chapter 168 requires that these petroleum products meet minimum product-grade specifications as prescribed by rule by the Department; and that the Department's inspections be conducted, so far as applicable, in accordance with the latest standards produced by ASTM International. The Department also has authority under section 227.11 (2) (a) of the Statutes to promulgate rules interpreting any statute that is enforced or administered by the Department, if the rule is considered necessary to effectuate the purpose of the statute.

4. Related statute or rule.

The Department's grade specifications and inspection requirements for petroleum products are contained in chapter Comm 48. The proposed rule changes for Comm 48 are related to rules in chapter Comm 10 that address inventory controls for motor vehicle fuels, and to rules in chapters Comm 10 and 14 that address storage of flammable and combustible liquids.

5. General summary of proposed rules.

The proposed changes for Comm 48 consist primarily of updating it to be consistent with corresponding changes that are being developed for chapters Comm 10 and 14, and with several recently updated national standards for petroleum products and fuel ethanol. The proposed changes also include several clarifications and refinements relating to administration and enforcement by the Department's inspectors.

For example, the current rules require identification of a petroleum product as to its name or grade; and prohibit any mixing of dissimilar fuels, dissimilar octane, or dissimilar grade, that would allow fraudulent fuel sales. The rule revision would expand this prohibition to include virtually any unauthorized mixing of these products. This expansion would improve the Department's ability to verify the inventory control that is required for these products under chapter Comm 10 – because required records of product deliveries could then be directly compared to required records of tank contents and sales volumes, rather than obscured by unknown mixing of fuels with dissimilar grade or dissimilar octane.

The proposed changes for Comm 48 have been developed with assistance from the Department's Petroleum Products Code Advisory Committee. The members of that citizen advisory committee are as follows:

<u>Name</u>	<u>Representing</u>
Don DeMaster	Wisconsin Small Engine Consortium
Robert S. Elvert	Wisconsin Petroleum Council
Curt Heller	Wisconsin Federation of Cooperatives
Greg Klimek	Wisconsin Motor Carriers Association
Tony Wanta	National Petrochemical and Refiners Association
Gary Welch	Renewable Fuels Association
Ed Wolf	Petroleum Marketers Association of Wisconsin

6. Summary of, and comparison with, existing or proposed federal regulations.

The Federal Trade Commission establishes requirements for accurate automotive fuel ratings, under Title 16 CFR Part 306, which includes criteria for octane ratings, certification, and posting. The proposed rule revisions for Comm 48 do not directly address those requirements, and there are no other existing or proposed federal regulations that address the proposed rule revisions.

7. Comparison with rules in adjacent states.

Minnesota, Iowa, Illinois, and Michigan all have requirements addressing the quality of motor vehicle fuels. An Internet-based search showed that Iowa, Illinois, and Michigan similarly apply the most recent, corresponding standards produced by ASTM International. Minnesota and Illinois were found to similarly collect samples of motor fuels, which are then tested appropriately. This search did not reveal whether any of these States similarly prohibit unauthorized mixing of motor fuels, or whether similar efforts are made to verify inventory controls.

8. Summary of factual data and analytical methodologies.

Expanding the current rules to include prohibition of virtually any unauthorized mixing of motor vehicle fuels, and the resulting ability to better verify inventory controls for these products, is based on

the Department's longstanding experience with inspecting these facilities, and on support from the regulated community.

9. Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report.

An economic impact report was not prepared. Consideration of the potential effects on small business was based on federal guidelines produced by the Small Business Administration's Office of Advocacy.

10. Detailed summary of proposed rules.

The draft rules include the following substantive changes – and some minor technical revisions, such as renumbering all of the sections.

Comm 48.100 (4) – The included change clarifies that the Department has authority to inspect records, for the purpose of verifying that a facility maintains adequate inventory controls for its petroleum products.

Comm 48.100 (5) – Clarifies that the Department may choose to not investigate minor accidents.

Comm 48.100 (7) (intro.) and 48.300 (10) – Incorporates usage of red tags, into the current Department procedures for stopping sales from noncompliant petroleum storage systems.

Comm 48.100 (7) (c) 6. – Specifies that unauthorized mixing of fuels or fuel grades, as prohibited under Comm 48.590 (1) and (2), is an adequate cause for shutdown of a petroleum storage system.

Comm 48.300 (1) (c) – Adds biofuels to the list of alternative automotive fuels.

Comm 48.300 (3), (5), and (7) – Creates definitions for biofuels, inspection, and motor fuel.

Comm 48.400 – Updates the previously adopted national standards to include the current versions of the standards – and newly adopts ASTM Standards D 1655, 4806, and 5798, for aviation turbine fuels, denatured ethanol fuels, and ethanol fuels, respectively.

Comm 48.500 (1) (d) – Newly requires denatured fuel ethanol and fuel ethanol to comply with ASTM D 4806 and 5798, respectively.

Comm 48.500 (2) (b) – Newly requires aviation turbine fuel to comply with ASTM D 1655.

Comm 48.580 (2) – Adds titles and text to more clearly show how a 100-degree flash point determines whether a fuel must be stored in a labeled, red container, and adds a Note explaining how the construction of these containers will be addressed in chapters Comm 10 and 14.

Comm 48.590 – Consolidates the code's currently prohibited actions into one section – and expands the prohibition against unauthorized mixing, to address all mixing, not just mixing that would allow fraudulent sales. In addition, subsection (1) specifically prohibits mixing a lower grade of petroleum product with a higher-labeled grade unless specifically approved in writing by an inspector; subsection (2) allows other blending of dissimilar octane, or dissimilar grades, if specifically approved in writing by an inspector; subsection (3) clarifies that no one may interfere

with an inspector's performance of duties under this code; and subsection (4) clarifies that no one may represent a motor fuel or petroleum product in any manner which conflicts with this code or chapter 168 of the statutes – which would provide a link to the corresponding requirements for biodiesel fuel that are proposed for inclusion in chapter 168, through a draft 2005 bill currently identified as LRB-0240/1.

Comm 48.600 (1) (a) 3. – Deletes sampling and inspection of specialty motor fuels and petroleum products that will not be introduced into the wholesale or retail market stream.

Comm 48.600 (2) (d) – Replaces prescribed sampling times with reasonable sampling times that are determined at the Department's discretion.

Comm 48.600 (3) (a) (intro.) – Repeals an outdated requirement for the Department to issue an inspection certificate.

Comm 48.600 (3) (b) 1. – Clarifies that a sample container must be closed tightly, and deletes a requirement to take the sample in the presence of a disinterested person.

Comm 48.600 (3) (b) 2. a. – Recognizes that the means of conveyance for an incoming petroleum product may be other than a pipeline or tank car.

Comm 48.600 (3) (b) 3. – Allows sale of a petroleum product that has not been sampled by the Department, if a sample is taken by the recipient in accordance with the code, and the sample is held for seven business days.

Comm 48.650 (1) – Provides reimbursement for the Department, for products that are sent out for testing which cannot be performed by Departmental equipment.

Comm 48.650 (2) – Specifies fees that will be charged for inspections relating to product-performance complaints, mislabeling, accidents, or explosions.

Comm 48.650 (3) – Waives the above reimbursements and fees where the corresponding product is found to comply with Comm 48.

Comm 48.650 (5) – Prescribes continuation of a shutdown if a reimbursement or fee is not paid.

File reference: Comm 48/Rule Analysis 05.05